

EXHIBIT M

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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

**SECOND SUPPLEMENTAL
 DECLARATION OF THOMAS J.
 ALLISON IN SUPPORT OF DEBTORS'
 MOTIONS [AFFECTS ALL DEBTORS]**

Date of Hearing: May 18, 2006
 Time of Hearing: 9:30 a.m.

☐ USA First Trust Deed Fund, LLC

I, Thomas J. Allison, hereby declare, verify and state as follows:

1. I make this Second Supplemental Declaration as additional support for various motions of USA Commercial Mortgage Company ("USACM") and its four affiliates who filed bankruptcy petitions in this Court on April 13, 2006 (collectively, the "Debtors"), including the "Motion for Order Authorizing Reimbursement of Due Diligence Expenses of Potential Post-Petition Lender" (the "Due Diligence Expenses Motion") and the "Motion Authorizing Debtor, Pursuant to 11 U.S.C. § 105 and § 363(b)(1), to Accept Loan Payment Proceeds and Provide Partial Releases or Full Releases in Connection With the Sale of Properties Securing Loans Originated by the Debtor to Third Party Borrowers, and to Ratify Partial Releases Previously Provided by the Debtor" (the "Partial Releases Motion"). My Second Supplemental Declaration is based upon personal knowledge and the facts set forth herein.

2. It appears that as of April 13, 2006 (the "Petition Date"), USACM was acting as the loan servicer for approximately 115 separate loans (the "Serviced Loans") having a combined outstanding loan balance of approximately \$962 million. Attached as Exhibit A to the Supplemental Declaration of Thomas J. Allison dated May 2, 2006 that was e-filed with the Court on May 2, 2006 (Docket No. 130), is a spreadsheet created under my direction by the Mesirow team providing preliminary information for each of the Serviced Loans, including the loan name, whether the loan is performing or non-performing, number of investors, origination date, outstanding balance, unpaid interest, and the percentage of the loan held by two of the Debtors in these related bankruptcy cases, USA Capital First Trust Deed Fund, LLC ("Capital First") and USA Capital Diversified Trust Deed Fund, LLC ("Diversified") (collectively the "Funds"), by USACM, and by other "Direct Lenders" (as defined below).

3. I have directed that the Mesirow team review the loan files for each of the Serviced Loans. Based on that review, it appears that the vast majority of the Serviced

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1 Loans are secured by a trust deed on a commercial real estate project (the "Projects"),
 2 many of which are construction loans for construction Projects that are not yet completed.

3 4. It appears that as of the Petition Date approximately 62 of the Serviced
 4 Loans were delinquent in the payment of interest or otherwise could be considered non-
 5 performing (the "Nonperforming Loans"). The Nonperforming Loans represent 72%
 6 percent in outstanding loan balance of the Serviced Loans.

7 5. There are approximately 3,600 investors (the "Direct Lenders") whose
 8 names appear as a "Lender" in the loan documents for one or more of the Serviced Loans.
 9 The two Funds are included among the Direct Lenders.

10 6. Prior to April 2006, USACM regularly made interest payments to Direct
 11 Lenders each month regardless of whether the particular Serviced Loans relating to each
 12 Direct Lender were performing or nonperforming. For example, during the first three
 13 months of 2006, USACM collected on average approximately \$5.3 million per month in
 14 interest payments on the Serviced Loans but paid out on average approximately \$9.7
 15 million per month to the Direct Lenders. It appears that a large portion of the Direct
 16 Lenders received monthly payments from USACM prior to the Petition Date that such
 17 Direct Lenders were not entitled to receive (because they were invested, at least in part, in
 18 one or more Nonperforming Loans), and thus such Direct Lenders owe a debt in an amount
 19 which is yet to be determined for the amounts overpaid to them.

20 7. Capital First has an interest as a Direct Lender in 53 of the Serviced Loans --
 21 in 45 loans it owns only a fractional interest along with other Direct Lenders, and in 8
 22 loans it is the sole Direct Lender. Further, of the 53 total Serviced Loans in which Capital
 23 First has an interest, 29 (55% in number) are Nonperforming Loans.

24 8. Diversified has an interest as a Direct Lender in 23 of the Serviced Loans --
 25 in 16 loans it owns only a fractional interest along with other Direct Lenders, and in 7
 26 Serviced Loans it is the sole investor. Further, of the 23 total loans in which Diversified
 27 has an interest, 20 (87% in number) are Nonperforming Loans.
 28

10. Capital First has approximately 1,300 members owning membership interests in that LLC entity, and Diversified has approximately 1,900 members owning membership interests in that LLC entity (collectively, the “Fund Members”).

11. I have determined in my business judgment that it is in the best interests of the Debtors to obtain post-petition, debtor-in-possession financing (the "Post-Petition Loan") for purposes of, among other things, assisting in the funding of the Debtors' operational expenses and administrative expenses, given the number and magnitude of Nonperforming Loans that must be collected, and providing a source of additional loan funds (if approved by the Court) for certain of the Serviced Loans where the funding to date for construction loans is less than the full construction budgets prepared by the Borrowers for the completed construction projects (the "Projects") being built by such Borrowers (the "Construction Budget Shortfalls") and where such funding is necessary or appropriate to maintaining and protecting the value of the collateral securing these certain Serviced Loans.

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1 13. When the Due Diligence Expenses Motion was filed on May 8, 2006, the
2 negotiations with Fortress were not yet completed. The parties anticipated that the terms
3 in the draft Term Sheet that was under consideration at that time might change prior to the
4 issuance of a firm commitment from Fortress, which was expected prior to the time the
5 Due Diligence Expenses Motion was set for hearing.

6 14. A Commitment Letter (the "Commitment Letter") signed by Fortress and
7 dated May 12, 2006, has been delivered to me on behalf of the Debtors. As contemplated
8 by the Due Diligence Expenses Motion, a copy of the Commitment Letter was attached as
9 Exhibit "1" to the "Notice of Commitment Letter for DIP Financing" that was e-filed with
10 the Court on May 16, 2006, as Docket No. 254. A true and correct additional copy of the
11 Commitment Letter is attached hereto as Exhibit A and is incorporated herein.

12 15. In my negotiations with Fortress, before Fortress was willing to commit
13 additional time and resources to evaluating a potential Post-Petition Loan, Fortress stated
14 that it would require that the Debtor agree (with Court approval) to reimburse Fortress for
15 actual expenses (including Fortress's reasonable attorney fees) incurred by Fortress in
16 connection with completion of due diligence and other matters associated with the
17 potential Post-Petition Loan. Fortress has asked that the Debtors provide a cash deposit
18 (the "Deposit") in the amount of \$150,000, to be applied by Fortress toward actual
19 expenses incurred or to be incurred in completing due diligence for the potential Post-
20 Petition Loan. The amount of the Deposit was previously included in the Budget that was
21 attached as Exhibit B to the Supplemental Declaration of Thomas Allison dated May 2,
22 2006 that was e-filed with the Court on May 2, 2006 (Docket No. 130). Indeed, while
23 Fortress has delivered a Commitment Letter to the Debtors, the Commitment remains
24 conditioned on the payment of the Deposit and the completion of due diligence (including
25 legal due diligence) which the Deposit will allow for and facilitate. As set forth in the
26 Commitment Letter, if the Deposit is not approved by the Court on May 18, 2006 and paid
27
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1 to Fortress by May 19, 2006, the Commitment Letter will terminate. See, Exhibit A
2 attached hereto.

3 16. In exchange for Debtors' agreement to seek approval for the Deposit to
4 reimburse the due diligence expenses of Fortress, Fortress has agreed that if Fortress
5 concludes, for any reason, not to proceed with the Post-Petition Loan, Fortress will deliver
6 to the Debtors copies of all written work-product created by Fortress in its due diligence
7 review of the potential Post-Petition Loan (excluding documents protected by
8 attorney/client or attorney work product privileges).

9 17. It is my business judgment that the payment of due diligence expenses to a
10 debtor-in-possession lender is customary for debtor-in-possession financing transactions,
11 and that the amount of the Deposit is a reasonable estimate of the amount of due diligence
12 expenses that will reasonably be incurred by Fortress.

13 18. It is my business judgment that there are at least three valid business reasons
14 for obtaining the Post-Petition Loan for the Debtors: (a) Debtors may need additional
15 sources of funds to pursue all necessary collection actions with respect to Nonperforming
16 Loans, given the number and amount of Nonperforming Loans which are currently not
17 generating cash to pay servicing fees to fund these actions; (b) Debtors may need
18 additional liquidity to fund administrative and operational expenses in the event that the
19 timing of payments on the Serviced Loans from which Debtors' servicing fees and other
20 contractual costs and fees are deducted (and which the Court has approved as funding
21 sources) are irregular and/or disrupted and do not match the funding requirements for the
22 timely payment of Debtors' administrative and operational expenses; and (c) Debtors need
23 a source of funding for additional loans to the Borrowers with Construction Budget
24 Shortfalls to allow such Borrowers to complete their Construction Projects if the Debtors
25 determine that additional funding is necessary or appropriate to preserve value of the
26 underlying collateral of the Serviced Loans for the Direct Lenders, the Funds, the Fund
27 Members, and USACM and such funding is then approved by the Court.
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1 FUNDING ADMINISTRATIVE AND OPERATIONAL EXPENSES

2 19. Mesirow, with assistance from USACM's personnel and attorneys, is
3 engaging in a loan-by-loan credit and collateral evaluation, arranging for appropriate
4 appraisals and checks on collateral, and commencing collection activities on
5 Nonperforming Loans (including foreclosures, if necessary, and collections on guarantees)
6 and determining the most appropriate way to bring each Nonperforming Loan to a
7 performing status. These tasks are critical tasks that must be accomplished in order to
8 analyze and safeguard the interests of all Direct Lenders (including the interests of the
9 Funds as Direct Lenders) and Fund Members.

10 20. Mesirow is preparing a ledger for each loan as requested by the SEC and the
11 Nevada Mortgage Lending Division. These ledgers will allow Direct Lenders to determine
12 the status of each Serviced Loan in their portfolios.

13 21. Mesirow is preparing an account reconciliation for each Direct Lender and
14 for each Fund Member (to the extent there are Fund Members who are not also Direct
15 Lenders). These reconciliations will indicate amounts due to the Direct Lender on account
16 of each Service Loan in their portfolios, as well as amounts that have been overpaid on
17 Nonperforming Loans. Principal payments received by USACM but not remitted will also
18 be indicated. The reconciliations for the Fund Members will indicate the positions of the
19 respective Funds with regard to each Serviced Loan in their portfolios, as well as the Fund
20 Members' percentage ownership interests in the Funds.

21 22. In its Limited Opposition to the Partial Releases Motion, the Official
22 Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the
23 "First Trust Deed Committee") has requested that "USACM be required to report monthly
24 to the Court the following: (i) the sale proceeds that USACM actually received in
25 connection with the proposed sales and an accounting for such funds on a per loan basis;
26 and (ii) the sale proceeds that were distributed to any first priority lender and the amount
27 outstanding on any related first priority loan after such payments." I have instructed my
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1 staff and my attorneys to include these monthly reports as requested by the First Trust
2 Deed Committee as part of the monthly Operating Reports to be filed by the Debtors with
3 the Court.

4 23. Mesirow is instituting appropriate internal financial and accounting controls
5 and loan servicing audit trails so that the problems that resulted in the Debtors' bankruptcy
6 filings will not recur. Mesirow is also attempting to trace all transactions with non-debtor
7 insiders or affiliated entities; and Mesirow will follow up to enforce and collect any insider
8 or affiliate debts owed the Debtors.

9 24. The Debtors' Revised Budget (the "Budget"), which was attached as Exhibit
10 B to the Supplemental Declaration of Thomas J. Allison that was e-filed on May 2, 2006
11 (Docket No. 130), outlines the Budget that the Debtors have prepared for payment of the
12 administrative costs and collection costs that must be undertaken by the Debtors to
13 preserve and increase value for the Debtors, the Direct Lenders, and the Fund Members.
14 However, the Budget only contemplated the appointment of one creditors committee for
15 the five Debtors, so it is possible that the professional fees associated with payment for
16 counsel to the four committees that were just appointed by the United States Trustee will
17 be even higher than those contemplated by the Budget, requiring additional sources of
18 funds for the Debtors to operate in Chapter 11.

19 25. If the Court approves the payment of the Deposit, the Deposit will be paid
20 from the sources outlined in and in accordance with the Budget. The Debtors are not
21 asking that other funds being held by the Debtors be used to pay the Deposit, but only that
22 the Deposit be paid from those funding sources outlined in the Budget and previously
23 approved by the Court.

24 LIQUIDITY CONCERNS

25 26. Mesirow has initiated measures for collecting unpaid interest on the
26 Nonperforming Loans, as well as implementing improved loan servicing procedures.
27 However, even with these operational changes, the regular payment streams of payments
28

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1 being made to USACM as Servicer of the Serviced Loans have been disrupted because of
 2 the filing of the bankruptcy petitions for the Debtors. Moreover, interest is not being paid
 3 on a regular basis on the large number of Nonperforming Loans. Therefore, the Debtors
 4 cannot currently count on a regular stream of payments being made to USACM as Servicer
 5 from which the servicing fees and other contractual costs and fees that will be used to fund
 6 the Budget will be deducted.

7 27. The Debtors are in need of additional liquidity in the form of the Post-
 8 Petition Loan in order to be able to timely pay their administrative expenses and
 9 operational expenses as they are incurred on a regular basis, as contemplated by the
 10 Budget. To the extent that there are insufficient funds on hand on any particular date from
 11 the funds which the Court has authorized the Debtors to use for payment of administrative
 12 and operational expenses incurred to collect unpaid interest and principal on the Serviced
 13 Loans, the Debtors can draw on the Post-Petition Loan in order to cover any such
 14 insufficiency.

15 FUNDING FOR CONSTRUCTION BUDGET SHORTFALLS

16 28. Attached hereto as Exhibit B and incorporated herein is a list prepared by
 17 Mesirow of thirty (30) of the Serviced Loans which have Construction Budget Shortfalls.
 18 The amount of the Construction Budget Shortfall for each of these 30 Serviced Loans (the
 19 "Shortfall Loans") is listed on Exhibit B. The total amount of the Construction Budget
 20 Shortfalls is \$73,122,216.

21 29. I believe that the Borrowers for the Shortfall Loans requested loan funding
 22 for only a portion of the construction budgets for their various Projects because they
 23 wanted to avoid having to pay interest from the inception of the Shortfall Loans on the full
 24 amount of the loan funds needed to cover their entire construction budgets for their
 25 completed Projects. I believe that the Borrowers for the Shortfall Loans are planning to
 26 build their Projects in stages, and are looking to obtain additional loan funding for the
 27 future stages of their Projects from USACM.
 28

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1 30. The Projects for which the Shortfall Loans are being used for construction
2 purposes are not completed Projects. It is my business judgment that most, if not all, of the
3 Borrowers for the Shortfall Loans will need additional loan funding of up to the amount of
4 the Construction Budget Shortfalls for each Shortfall Loan in order to complete their
5 Projects.

6 31. It is my business judgment that the value of the collateral for the Shortfall
7 Loans will be preserved and greatly enhanced for the benefit of the Direct Lenders, the
8 Funds, the Funds Members, and the Debtors if the Projects can be completed as
9 contemplated by their Borrowers. A completed construction project that is a candidate for
10 a sale to an investor or a take-out loan from a permanent financing source is much more
11 likely to generate the funds needed to pay off the Shortfall Loans than an uncompleted
12 construction project that is likely to be encumbered with mechanic's liens and embroiled in
13 other litigation.

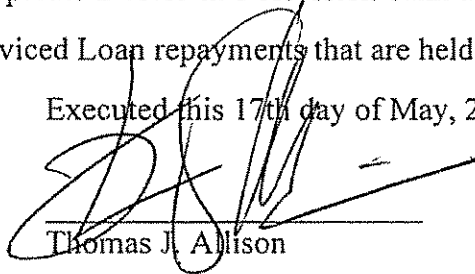
14 32. It is my belief that USAMC does not have the obligation, but has the right,
15 with Court approval, to fund additional loan funds in the amount of the Construction
16 Budget Shortfalls for each of the Shortfall Loans. It is my business judgment that USAMC
17 should seek Court approval to use some of the proceeds from the Post-Petition Loan to
18 fund the Construction Budget Shortfalls for most, if not all, of the Shortfall Loans.
19 USAMC will make its determination whether or not to seek Court approval to fund a
20 particular Construction Budget Shortfall from the Post-Petition Loan based upon appraisals
21 and other customary due diligence lending standards to be applied by the Debtor to each
22 Shortfall Loan and each Project, including whether or not the particular Shortfall Loan is a
23 Nonperforming Loan.

24 33. USACM has filed a Motion seeking authority to engage an outside appraisal
25 firm to evaluate all of the real estate collateral securing the Serviced Loans. These
26 appraisals will assist USACM in its due diligence determination whether or not to fund a
27 particular Construction Budget Shortfall for a particular Project.
28

OBJECTIONS TO PARTIAL RELEASES MOTION

34. The Serviced Loan repayments that the Debtor is receiving from the Borrowers as contemplated by the Partial Releases Motion are being held in a separate bank account established by USAMC, and Mesirow is keeping accurate accounting records to account for such loan repayments on a Serviced Loan by Serviced Loan basis. The servicing fees and other contractual fees and costs that the Court has authorized to be used by the Debtors are being deducted from these loan repayments and are being deposited into a separate Debtor-in-Possession bank account, and are not being commingled with the net Serviced Loan repayments that are held in a separate account.

Executed this 17th day of May, 2006.



Thomas J. Allison

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EXHIBIT “B”

Exhibit B

PRELIMINARY INFORMATION, CANNOT BE RELIED UPON

USA Capital
Construction Budget Shortfall
05/16/06

Loan	Amount
Binford	\$925,000
Boise Gowan	\$125,000
Bundy \$2.5m	\$200,000
Bundy \$5m	\$750,000
Bundy \$7.5m	\$800,000
Bundy 8.9m	\$8,900,000
Castaic Partners III	\$325,000
Columbia Managing	\$890,000
Comvest	\$375,000
Cornman Toltec	\$175,000
Copper Sage Phase II	\$7,750,000
Eagle Meadows	\$4,580,000
Elizabeth May	\$1,200,000
Foxhill 216	\$3,020,000
Franklin Stratford	\$975,000
Gateway Stone	\$3,045,000
Gramercy	\$2,216,216
J Jireh	\$275,000
La Hacienda	\$1,645,000
Lerin Hills	\$2,550,000
Meadow Creek Partners	\$11,700,000
Ocean Atlantic	\$500,000
Palm Harbor	\$520,000
Preserve	\$596,000
Rio Rancho	\$3,850,000
Slade	\$225,000
So Cal Land 2nd	\$200,000
Standard Property	\$8,110,000
The Gardens Phase II	\$6,500,000
University Estates	\$200,000
Total	\$73,122,216